



November 1, 1999

Mr. Steven D. Monte'
Assistant City Attorney
City Hall
1500 Marilla
Dallas, Texas 75201

OR99-3065

Dear Mr. Monte':

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129673.

The City of Dallas (the "city") received a request for "the finding of the investigation on control number 99-114." You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(b). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 22, 1999 Tex. Sess. Law Serv. 4500, 4509-4510 (Vernon) (to be codified as an amendment to TEX. GOV'T CODE § 552.302).

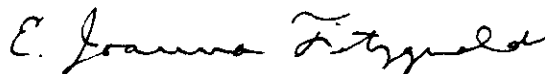
You admit that you asked for an attorney general decision in this case after the 10-day period expired. Therefore, absent a compelling reason to withhold the information, the requested records must be released. However, we find that portions of the documents at issue are confidential by another source of law, and therefore a compelling reason exists to withhold

these portions of the requested records. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In *Industrial Foundation*, the Texas Supreme Court held that information that relates to, among other things, sexual assault is intimate and embarrassing and is generally of no legitimate public interest. *Id.* at 683; *see also* Open Records Decision Nos. 393 (1983), 339 (1982). Therefore, under section 552.101 in conjunction with common-law privacy, the city must withhold the requested information only to the extent that it identifies the sexual assault victim. The remainder of the requested information must be released to the requestor. We have marked the information that must be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\jc

Ref: ID# 129673

Encl: Marked documents

cc: Mr. Kenneth W. Wilkins
P. O. Box 710433
Dallas, Texas 75371
(w/o enclosures)